

AMENDED IN ASSEMBLY APRIL 6, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 923

Introduced by Assembly Member Steinorth

February 26, 2015

An act to amend ~~Section~~ *Sections 3750 and 3755* of, and to add ~~Section~~ *Sections 3754.8 and 3769.7* to, the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 923, as amended, Steinorth. Respiratory care practitioners.

~~Under~~

(1) *Under* the Respiratory Care Practice Act, the Respiratory Care Board of California licenses and regulates the practice of respiratory care and therapy. The act authorizes the board to order the denial, suspension, or revocation of, or the imposition of probationary conditions upon, a license issued under the act, for any of specified causes. A violation of the act is a crime.

This bill would include among those causes for discipline the commission of an act of neglect, endangerment, or abuse involving a person under 18 years of age, a person 65 years of age or older, or a dependent adult, as described: *and the provision of false statements or information on any form provided by the board or to any person representing the board during an investigation, probation monitoring compliance check, or any other enforcement-related action.*

The bill would provide that the expiration, cancellation, forfeiture, or suspension of a license, practice privilege, or other authority to practice respiratory care, the placement of a license on a retired status, or the voluntary surrender of a license by a licensee, does not deprive

the board of jurisdiction to commence or proceed with any investigation of, or action or disciplinary proceeding against, the licensee, or to render a decision to suspend or revoke the license.

(2) Under the act the board may take action against a respiratory care practitioner who is charged with unprofessional conduct which includes, but is not limited to, repeated acts of clearly administering directly or indirectly inappropriate or unsafe respiratory care procedures, protocols, therapeutic regimens, or diagnostic testing or monitoring techniques, and violation of any provision for which the board may order the denial, suspension, or revocation of, or the imposition of probationary conditions upon, a license. The act provides that engaging in repeated acts of unprofessional conduct is a crime.

This bill would expand the definition of unprofessional conduct to include any single act described above or any single act of abusive behavior, including, but not limited to, humiliation, intimidation, ridicule, coercion, threat, or any other conduct that threatens the health, welfare, or safety of a person, whether or not the victim is a patient, a friend or family member of the patient, or an employee. Because this bill would change the definition of a crime, it would impose a state-mandated local program.

(3) The act authorizes the board to deny, suspend, or take other actions against a license for, among other things, conviction of a sex offense or any crime involving bodily injury or sexual misconduct.

This bill would authorize the board to provide notice of an applicant's or licensee's arrest for those crimes on the board's Internet Web site, to employers, or both, and would require the board to remove the notice 60 days after the criminal matter is adjudicated or when all appeal rights have been exhausted, whichever is later.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~no~~ yes.

The people of the State of California do enact as follows:

SECTION 1. Section 3750 of the Business and Professions Code is amended to read:

3750. The board may order the denial, suspension, or revocation of, or the imposition of probationary conditions upon, a license issued under this chapter, for any of the following causes:

- (a) Advertising in violation of Section 651 or Section 17500.
- (b) Fraud in the procurement of any license under this chapter.
- (c) Knowingly employing unlicensed persons who present themselves as licensed respiratory care practitioners.
- (d) Conviction of a crime that substantially relates to the qualifications, functions, or duties of a respiratory care practitioner. The record of conviction or a certified copy thereof shall be conclusive evidence of the conviction.
- (e) Impersonating or acting as a proxy for an applicant in any examination given under this chapter.
- (f) Negligence in his or her practice as a respiratory care practitioner.
- (g) Conviction of a violation of ~~any of the provisions of this chapter or of any provision of~~ Division 2 (commencing with Section 500), or violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate ~~any provision or term of this chapter or of any provision of~~ Division 2 (commencing with Section 500).
- (h) The aiding or abetting of any person to violate this chapter or any regulations duly adopted under this chapter.
- (i) The aiding or abetting of any person to engage in the unlawful practice of respiratory care.
- (j) The commission of any fraudulent, dishonest, or corrupt act ~~which~~ *that* is substantially related to the qualifications, functions, or duties of a respiratory care practitioner.
- (k) Falsifying, or making grossly incorrect, grossly inconsistent, or unintelligible entries in any patient, hospital, or other record.
- (l) Changing the prescription of a physician and surgeon, or falsifying verbal or written orders for treatment or a diagnostic regime received, whether or not that action resulted in actual patient harm.
- (m) Denial, suspension, or revocation of any license to practice by another agency, state, or territory of the United States for any

1 act or omission that would constitute grounds for the denial,
2 suspension, or revocation of a license in this state.

3 (n) Except for good cause, the knowing failure to protect patients
4 by failing to follow infection control guidelines of the board,
5 thereby risking transmission of bloodborne infectious diseases
6 from licensee to patient, from patient to patient, and from patient
7 to licensee. In administering this subdivision, the board shall
8 consider referencing the standards, regulations, and guidelines of
9 the State Department of Health Services developed pursuant to
10 Section 1250.11 of the Health and Safety Code and the standards,
11 regulations, and guidelines pursuant to the California Occupational
12 Safety and Health Act of 1973 (Part 1 (commencing with Section
13 6300) of Division 5 of the Labor Code) for preventing the
14 transmission of HIV, hepatitis B, and other bloodborne pathogens
15 in health care settings. As necessary, the board shall consult with
16 the California Medical Board, the Board of Podiatric Medicine,
17 ~~the Board of Dental Examiners,~~ *Dental Board of California*, the
18 Board of Registered Nursing, and the Board of Vocational Nursing
19 and Psychiatric Technicians, to encourage appropriate consistency
20 in the implementation of this subdivision.

21 The board shall seek to ensure that licensees are informed of the
22 responsibility of licensees and others to follow infection control
23 guidelines, and of the most recent scientifically recognized
24 safeguards for minimizing the risk of transmission of bloodborne
25 infectious diseases.

26 (o) Incompetence in his or her practice as a respiratory care
27 practitioner.

28 (p) A pattern of substandard care or negligence in his or her
29 practice as a respiratory care practitioner, or in any capacity as a
30 health care worker, consultant, supervisor, manager or health
31 facility owner, or as a party responsible for the care of another.

32 (q) Commission of an act of neglect, endangerment, or abuse
33 involving a person under 18 years of age, a person 65 years of age
34 or older, or a dependent adult as described in Section 368 of the
35 Penal Code, without regard to whether the person was a patient.

36 (r) *Providing false statements or information on any form*
37 *provided by the board or to any person representing the board*
38 *during an investigation, probation monitoring compliance check,*
39 *or any other enforcement-related action.*

SEC. 2. Section 3754.8 is added to the Business and Professions Code, to read:

3754.8. The expiration, cancellation, forfeiture, or suspension of a license, practice privilege, or other authority to practice respiratory care by operation of law or by order or decision of the board or a court of law, the placement of a license on a retired status, or the voluntary surrender of the license by a licensee shall not deprive the board of jurisdiction to commence or proceed with any investigation of, or action or disciplinary proceeding against, the licensee, or to render a decision to suspend or revoke the license.

SEC. 3. *Section 3755 of the Business and Professions Code is amended to read:*

3755. The board may take action against any respiratory care practitioner who is charged with unprofessional conduct in administering, or attempting to administer, direct or indirect respiratory care: ~~care in any care setting.~~ Unprofessional conduct includes, but is not limited to, ~~repeated acts any act~~ of clearly administering directly or indirectly inappropriate or unsafe respiratory care procedures, protocols, therapeutic regimens, or diagnostic testing or monitoring techniques, ~~and abusive behavior;~~ including, but not limited to, humiliation, intimidation, ridicule, coercion, threat, or any other conduct that threatens the health, welfare, or safety of a person, whether or not the victim is a patient, a friend or family member of the patient, or an employee, or violation of any provision of Section 3750. The board may determine unprofessional conduct involving any and all aspects of respiratory care performed by anyone licensed as a respiratory care practitioner. Any person who engages in repeated acts of unprofessional conduct shall be guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars (\$1,000), or by imprisonment for a term not to exceed six months, or by both that fine and imprisonment.

SEC. 4. *Section 3769.7 is added to the Business and Professions Code, to read:*

3769.7. (a) *If a licensee or applicant is arrested for any crime described in Section 3752.5, 3752.6, or 3752.7, upon receipt of certified copies of arrest documents, the board may provide notice of the licensee's or applicant's arrest on the board's Internet Web site, to employers, or both.*

1 **(b)** *If the board provides notice of a licensee's or applicant's*
2 *arrest pursuant to this section, the board shall remove the notice*
3 *60 days after the criminal matter is adjudicated or when all appeal*
4 *rights have been exhausted, whichever is later.*

5 **SEC. 5.** *No reimbursement is required by this act pursuant to*
6 *Section 6 of Article XIII B of the California Constitution because*
7 *the only costs that may be incurred by a local agency or school*
8 *district will be incurred because this act creates a new crime or*
9 *infraction, eliminates a crime or infraction, or changes the penalty*
10 *for a crime or infraction, within the meaning of Section 17556 of*
11 *the Government Code, or changes the definition of a crime within*
12 *the meaning of Section 6 of Article XIII B of the California*
13 *Constitution.*